

WestNet Rail (WNR)

Final Determination on WNR's Proposed Revised Segregation Arrangements

6 April 2010

Economic Regulation Authority



WESTERN AUSTRALIA

A full copy of this document is available from the Economic Regulation Authority website at www.era.com.au.

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FINAL DETERMINATION

1. On 6 October 2009, WestNet Rail (**WNR**) submitted its proposed revised Segregation Arrangements to the Economic Regulation Authority (**Authority**) for approval.
2. The Authority has considered WNR's proposed revised Segregation Arrangements in conjunction with comments made by interested parties in submissions.
3. WNR's proposal has been assessed by the Authority in accordance with the requirements set out under sections 28 to 34 of the *Railways (Access) Act 1998 (Act)* and section 42 of the *Railways (Access) Code 2000 (Code)*.
4. The final determination of the Authority is to approve WNR's proposed revised Segregation Arrangements subject to 7 amendments, as listed below.

List of Amendments

Required Amendment 1

WNR's proposed revised Segregation Arrangements should be amended as follows:

- Insert the sentence "This information will be located in secure and lockable facilities within WestNet Rail's head office." after the first sentence under point (i) in the second part of section 4 on page 4.
- Replace the term "Compliance Statement" with the term "Confidentiality and Compliance Agreement".
- Replace the term "specific confidentiality agreement" with "Confidentiality and Compliance Agreement" in section 3.1 of Appendix A.

Required Amendment 2

Section 2 of Appendix 1 of WNR's proposed revised Segregation Arrangements should be amended by inserting, at the end of this section, the following:

Responsibilities

Chief Executive Officer is responsible and has the authority to ensure a compliance regime for the Segregation Arrangements is put in place in WestNet Rail.

Commercial Manager is responsible for commercial arrangements, dealings and negotiations with new and existing customers ensuring they comply with the Segregation Arrangements.

Manager Safety and Compliance is to ensure that documented processes and procedures are established and implemented to maintain compliance with segregation obligations as described in the Act.

Access Manager is to ensure that day to day access related functions including train control, customer liaison and train schedulers conform to the approved Segregation Arrangements.

Compliance Officer is responsible to ensure that new people required to sign the Confidentiality and Compliance Agreement are aware of the requirements and to ensure that the required agreements are actually signed, keep the actual signed agreements and maintain appropriate records.

Confidentiality and Compliance Agreement

A copy of the Confidentiality and Compliance Agreement is attached in Appendix 2.”

- A copy of the Confidentiality and Compliance Agreement needs to be included as a new appendix (Appendix 2).

Required Amendment 3

Section 3.2 of Appendix A of WNR’s proposed revised Segregation Arrangements should be amended by deleting the two dot point paragraphs following the first sentence under the heading “General Management of Confidential Information”. These paragraphs should be replaced with the following:

- “All employees and contractors who are required to perform WestNet Rail Access related activities which are determined as confidential or which may be subject to the Segregation Arrangements shall complete an Access Segregation Awareness Training Session and sign a Confidentiality and Compliance Agreement, within 10 business days of commencing employment with WestNet Rail. The training session covers an overview of the Act and associated Code, Segregation obligations, Breaches to Segregation requirements and the need for signed Confidentiality and Compliance Agreements. The Safety and Compliance section shall maintain a list of all personnel who have undertaken the training session.
- Confirmation of appropriate personnel having signed a Confidentiality and Compliance Agreement shall be carried out on an annual basis and will be confirmed through the Independent External compliance audit.
- WestNet will maintain a current list of personnel positions, including consultants and contractors, required to undertake Access Segregation Awareness Training and sign a Confidentiality and Compliance Agreement. This list is set out below.
- WestNet Rail head office staff based at Welshpool, including:-
 - Accountants and Finance related personnel
 - Commercial functions personnel
 - Infrastructure related personnel (including engineers and technicians)
 - Access related personnel including schedulers, timetabling and others liaising with above rail operations
 - Legal personnel
 - Safety and Compliance personnel
 - Human Resource personnel
 - Business and Development personnel

- Administrative personnel
- Train Controllers
- WestNet Group staff including:
 - CEO
 - General Counsel
 - Chief Information Officer
 - IT related staff.
- WestNet Rail Directors
- WestNet Rail Regional Superintendents including:
 - Perway (6) Signalling (3) Communications (1)
- Consultants and Contractors who have occasion to work in head office for a period of more than 4 consecutive days or are working in head office without being directly escorted or supervised.
- Exclusions - visitors under the direct supervision of a WestNet Rail employee.
- The Safety and Compliance Section will maintain a current register of completed and signed-off Confidentiality and Compliance Agreements. The Compliance Officer shall record on the Confidentiality and Compliance register the following information:
 - Name of person completing the agreement
 - Job role of the person
 - Work group of the person
 - Date training completed.
- On receiving the signed copy of the Confidentiality and Compliance Agreement the Compliance Officer, will enter the date the agreement was signed and the location of the stored document on the Confidentiality and Compliance Register.
- The training officer will be responsible for maintaining and updating the electronic on line Confidentiality and Compliance module found on the Intranet along with the automated completion recording of the names and dates of completion.
- The Compliance Officer will keep a file containing all signed Confidentiality and Compliance Agreements under lock and key.”

Required Amendment 4

Section 8 of WNR’s proposed revised Segregation Arrangements should be amended as follows:

- Delete the words “WITH THESE ARRANGEMENTS” in the title and replace with “AND REVIEW”.
- Delete the text in point (i) and insert the following text in its place: “WNR agrees to the ERA reviewing its Segregation Arrangements in 2015 through a public consultation process. This review will commence on 1 October 2015 and WNR will provide the ERA with its proposed revision of its Segregation Arrangements on this date.”
- Renumber point (ii) as point (v). Insert a new point (ii) with the following text: “WNR agrees to the ERA monitoring WNR’s compliance with its Segregation Arrangements through an audit of WNR’s compliance with its Segregation Arrangements conducted every two years. This audit will be carried out by an independent auditor approved by the ERA, with WNR managing and funding the audit. The scope of the audit will be determined by the ERA. It is expected that the next audit will commence at the end of the 2011-12 financial year.”
- Insert a new point (iii) with the following text: “The final audit report will be provided to the ERA. The ERA will publish this report on its website (excluding confidential information).”
- Insert a new point (iv) with the following text: “WNR acknowledges that the ERA can also commission special audits at any time on any Segregation Arrangements issue where additional assurance is required.”

Required Amendment 5

Section 5 of Appendix A of WNR’s proposed revised Segregation Arrangements should be amended by deleting the entire text in this section and replacing with the following text: “WestNet will undertake an independent external audit of its obligations under its Segregation Arrangements every two years as set out under Section 8.”

Required Amendment 6

WNR’s Segregation Arrangements should be amended as follows:

- Section 1 (Point (iii)) - replace the words “persons seeking access or to other rail operators” with “persons seeking access, proponents or operators”.
- Section 4 (Point (i)) – replace the words “an access seeker who is seeking access” with “persons seeking access and proponents”.
- Section 6 – amend this section as follows:
 - Replace “access seekers and train operators” with “persons seeking access, proponents and operators” in the first paragraph.
 - Replace “Access seekers” with “Persons seeking access and proponents” in points (i) and (ii) of the third paragraph.
 - Replace “access seekers” with “persons seeking access and proponents” in the fifth paragraph.
 - Replace “access seeker” with “person seeking access” in the sixth paragraph.
- Section 9 – amend this section as follows:

- Replace the definitions of “Access Agreement” and “Regulator” with the Code definition for the corresponding terms.
- Replace the term “train operator” with “operator” in points (ii) and (iii) of the definition for “Master Train Control Diagrams”.
- Include the Code definitions for the following terms: Access, Operator, Proponent, Rail operations, Railway infrastructure and Railway owner.
- Include definitions, as set out in WNR’s TPP or TMG, for the following terms: Emergency, Instructions, Network, Scheduled train paths, Train control, Train control centre, Train controller and Train path.
- Appendix A (section 3.4) – amend this section as follows:
 - Replace the words “access seeker(s)” with “person(s) seeking access and proponent(s)”.
 - Replace the word “train operator” with “operator” in the first paragraph.
 - Delete the words “an associate operator or” in the second paragraph.
- Appendix 1 (sections 4.3 and 4.4) – replace the term an “access seeker” with “a person seeking access or proponent”.

Required Amendment 7

WNR’s proposed revised Segregation Arrangements should be amended as follows:

- Table and List of Contents:
 - Delete from the title the word “General”.
 - Delete from the List of Contents the words “10. Appendix A – Management and Compliance Processes (See separate document).” Replace these words with “Appendix A – Management and Compliance Processes”.
- Section 3:
 - Replace “will be” with “is” in the third paragraph.
 - Replace “Appendix A will include” with “Appendix A includes:” in the fifth paragraph.
 - Delete the last sentence which states “Appendix A will be approved by the Regulator and changes to Appendix A will also have to be approved by the Regulator.”
- Section 4:
 - Insert the word “Segregation” before the word “Arrangements” in the second paragraph.
 - Delete the word “area” in the second sentence under point (i) of the third paragraph.
 - Insert the words “this office” after the word “and” but before the word “will” in the second sentence under point (i) of the third paragraph.

- Delete the words “within an entity” and “of that entity” in the fifth sentence in point (ii) of the third paragraph.
- Appendix A (title, cover page and table of contents):
 - Delete the section number “10” and include Appendix A simply as an appendix titled “Appendix A – Management and Compliance Processes”.
 - Delete “(See separate document).” on page 9.
 - Delete the cover page for Appendix A (immediately after page 9), including the words “Appendix A (to the Segregation Arrangements), WestNet Rail, Segregation Arrangements, Management and Compliance Processes”.
 - Delete the table of contents for Appendix A and relocate the items therein to the table of contents for WNR’s proposed revised Segregation Arrangements (before page 1).
 - Renumber pages in Appendix A to be consecutive to the page numbers in the main text of WNR’s proposed revised Segregation Arrangements.
- Appendix A (section 1):
 - Delete the words “document” and “Determination first issued on the 6th June 2002 by the Independent Rail Access Regulator under Section 28 of the Act and any subsequent revisions.” in the first paragraph.
 - Replace the word “document” with “Appendix” in the second paragraph.
 - Replace the words “This document (Appendix A),” with “Appendix A” in the first sentence in the third paragraph.
 - Replace the words “It is the document that” with “Appendix A” in the second sentence in the third paragraph.
 - Replace the words “This document shall be” with “Appendix A is” in the fourth paragraph.
 - Delete the fifth paragraph “WestNet Rail Pty Ltd, the Owner as defined in the Railway (Access) Act 1998, provides and controls access for all Operators to the WestNet Rail routes as defined in Schedule 1 of the Railways (Access) Code 2000, in accordance with contractual obligations and the Rail Access Act 1998.”
 - Delete the sixth paragraph “(WestNet Rail shall be referred to in this document as WestNet).”
- Appendix A (section 4.1):
 - Delete the words “development of appropriate KPIs;” on page 7.

REASONS FOR THE FINAL DETERMINATION

BACKGROUND

5. WNR is the provider of “below” rail freight infrastructure, covering approximately 5,000 kilometres of track in the south-west of Western Australia. WNR is majority owned by Prime Infrastructure, a publicly listed Australian company.
6. WNR leases its freight railway network under a long term lease arrangement with the Western Australian Government. Section 3 of the Act defines a “railway owner” to mean the person having the management and control of the use of the railway infrastructure. Within this context, WNR is considered to be the railway owner for the freight railway network.
7. In April 2008, the Authority approved WNR’s current Segregation Arrangements. However, these arrangements did not include WNR’s segregation manual which outlines its segregation compliance procedures. This manual was submitted to the Independent Rail Access Regulator (**IRAR**) in 2002 on a confidential basis. The IRAR subsequently approved WNR’s Segregation Arrangements, including its manual, in 2003 without releasing the manual for public comment.
8. The Authority has since reviewed the relevant provisions in the Act and the Code relating to the process for approving a railway owner’s segregation arrangements. Based on this review, the Authority’s view is that the segregation manual is required to be made available for public comment as part of its assessment process and any approval of a railway owner’s segregation arrangements can only be made on the basis of approving the complete segregation arrangements (which includes the manual or compliance procedures).
9. Accordingly the Authority requested WNR to re-submit its Segregation Arrangements, including a public version of its segregation manual, for approval. WNR has submitted its manual as a public document following its revision of the earlier confidential manual approved by the IRAR in 2003, to make this manual consistent with WNR’s current role, as a below-rail owner only, rather than its previous role as an integrated (above and below-rail) owner.
10. On 6 October 2009, WNR submitted a revised Segregation Arrangements proposal. The segregation manual has been incorporated into WNR’s Segregation Arrangements as Appendix 1 to these arrangements. WNR’s proposed revised Segregation Arrangements document is available on the Authority’s website (www.erawa.com.au).
11. In addition to the inclusion of Appendix 1, WNR has proposed some changes to its previous Segregation Arrangements associated with the handling of confidential documents plus minor changes associated with personnel role descriptions and nomenclature issues. WNR has also deleted reference to Key Performance Indicators (KPIs) following the Authority’s review of its compliance obligations under the Act in mid-2009 which resulted in the Authority deciding that it was no longer appropriate for it to monitor the operational performance of railway networks.

LEGISLATIVE REQUIREMENTS

12. The legislative requirements in relation to segregation are contained under Part 4, Division 3 of the Act (Sections 28 to 34). These requirements are as follows:

Duty to segregate (Section 28)

- (1) A railway owner must make arrangements to segregate its access-related functions from its other functions.
- (2) A railway owner must have appropriate controls and procedures to ensure that the measures in place under subsection (1) —
 - (a) operate effectively; and
 - (b) are complied with.

Powers of Regulator in relation to Segregation (Section 29)

- (1) Before a railway owner puts in place or varies any arrangement for the purpose of carrying out its obligations under section 28 it must obtain the Regulator's approval to the arrangement or variation.
- (2) In addition to subsection (1), the Regulator may confer with a railway owner on any matter which relates to the way in which the railway owner's obligations under section 28 are to be carried out, with a view to the Regulator and the railway owner reaching agreement on the matter.
- (3) The Regulator may give directions in writing to a railway owner with respect to a matter to the extent that agreement is not reached under subsection (2), and the railway owner is to comply with any such direction.
- (4) If a railway owner fails to comply with —
 - (a) an arrangement, or varied arrangement, approved under subsection (1);
 - (b) an agreement reached under subsection (2); or
 - (c) a direction given under subsection (3),the railway owner commits an offence.

Penalty: \$100 000.

Matters to be covered under section 28 (Section 30)

Without limiting section 28, in carrying out its obligations under that section a railway owner must ensure that the provisions of sections 31, 32, 33 and 34 are satisfied.

Protection of confidential information (Section 31)

- (1) There must be an effective regime designed for the protection of confidential information relating to the affairs of persons seeking access or rail operators from —
 - (a) improper use; and
 - (b) disclosure by relevant officers, or other persons, to other officers or employees of the railway owner or other persons, except for proper purposes.

(2) In this section —

confidential information means information that has not been made public and that —

- (a) is by its nature confidential;
- (b) was specified to be confidential by the person who supplied it; or
- (c) is known by a person using or disclosing it to be confidential.

Avoidance of conflict of interest (Section 32)

The arrangements under section 28 must be such as to ensure that a relevant officer does not have a conflict between his or her duties —

- (a) as a person concerned in the performance of access-related functions, on the one hand; and
- (b) as a person involved in other business of the railway owner, on the other.

Duty of fairness (Section 33)

In performing their functions relevant officers must not have regard to the interests of the railway owner in a way that is unfair to persons seeking access or to other rail operators.

Maintenance of separate accounts and records (Section 34)

A railway owner must ensure that its accounts and records are in such form as to enable —

- (a) all income, expenditure, assets and liabilities relating to the carrying out of its access-related functions to be properly recorded and distinguished from the railway owner's other income, expenditure, assets and liabilities; and
- (b) where necessary, any item of income, expenditure, assets or liabilities which relates only in part to the carrying out of its access-related functions to be apportioned in a fair and reasonable manner.

13. Section 20(4) of the Act provides the framework within which the Authority's approval, as required under Section 29 of the Act, is to be made. Section 20(4) states:

In performing functions under this Act or the Code, the Regulator is to take into account —

- (a) the railway owner's legitimate business interests and investment in railway infrastructure;
- (b) the railway owner's costs of providing access, including any costs of extending or expanding the railway infrastructure, but not including costs associated with losses arising from increased competition in upstream or downstream markets;
- (c) the economic value to the railway owner of any additional investment that a person seeking access or the railway owner has agreed to undertake;
- (d) the interests of all persons holding contracts for the use of the railway infrastructure;
- (e) firm and binding contractual obligations of the railway owner and any other person already using the railway infrastructure;

- (f) the operational and technical requirements necessary for the safe and reliable use of the railway infrastructure
 - (g) the economically efficient use of the railway infrastructure; and
 - (h) the benefit to the public from having competitive markets.
14. In exercising its decision-making power pursuant to Section 29, the Authority is required to take into account all the factors listed in Section 20(4). However, the Authority may allocate such weight to each of the factors listed in Section 20(4) as the Authority considers appropriate.

PUBLIC CONSULTATION

15. The Code, under Section 42, requires the Authority to undertake public consultation prior to approving any arrangement or variation to segregation arrangements as mentioned under Section 29(1) of the Act. The consultation period specified in the Act is to be not less than 30 days.
16. The Authority undertook public consultation on WNR's proposed revised Segregation Arrangements over the period from 14 October 2009 to 15 January 2010 in accordance with the requirements under section 42(1) of the Code. One submission was received from the Australian Rail Track Corporation (**ARTC**).
17. The submission from the ARTC is available on the Authority's website (www.erawa.com.au).

DISCUSSION OF ISSUES

18. The submission from the ARTC noted that it found WNR's proposed revised Segregation Arrangements to be a comprehensive document containing an appropriate level of detail and process in dealing with segregation. In terms of the issues of concern to the ARTC in relation to segregation matters, the ARTC noted that it considered that the WNR document satisfied most of its concerns apart from the issue of KPIs.
19. The ARTC considered that WNR's proposal should include KPIs. As noted previously, the Authority made a decision following a review of its compliance obligations under the Act in mid-2009 that it was no longer appropriate for it to monitor the operational performance of railway networks. On this basis, the Authority does not require WNR to include KPIs in its Segregation Arrangements.
20. The Authority's role in monitoring compliance is limited to a railway owner's compliance with its obligations under the regulatory documents approved by the Authority under the Act and the Code, including segregation arrangements, and the obligations imposed on railway owners under relevant provisions of the Code. The Authority monitors compliance with these obligations through an audit process. The Authority has required amendments to the compliance section (Section 8) of WNR's proposal in this final determination to ensure that an appropriate description of this audit process is set out under this section.
21. Apart from the issue of KPIs, the ARTC did not express any other concerns in relation to WNR's proposal.

22. Given that the ARTC's submission was the only submission received on WNR's proposal and that there were no issues of substance raised in this submission, the Authority agreed that it was appropriate to proceed to a final determination without the need to first issue a draft determination. The Authority also notes that there is no requirement in the Act or the Code to issue a draft determination in the case of its approval of Segregation Arrangements.
23. The amendments required under this final determination fall into the following general categories which are discussed below:
 1. Confidentiality Matters
 2. Matters Relating to WNR's 2008-09 Audit
 3. Compliance Monitoring
 4. Terms and Definitions
 5. Minor/Formatting Matters

Confidentiality Matters

WNR's Proposal

24. In relation to the protection of access related confidential information, WNR's 2008 Segregation Arrangements contained, in section 4, the following sentence: "This information will be located in a secured compactus within the Access Management area of WestNet's head office premises." WNR has deleted this sentence from its proposed revised Segregation Arrangements.
25. WNR's proposed revised Segregation Arrangements also uses two different terms on a number of occasions ("Compliance Statement" and "Confidentiality and Compliance Agreement") to describe the same confidentiality document.

Authority's Assessment

26. The Authority does not consider it appropriate for WNR to remove the provision to store confidential information in an appropriate manner within its head office premises. Section 31 of the Act requires an effective regime for the protection of access-related confidential information. The Authority considers appropriate arrangements for the securing of such confidential information at WNR's head office to be an important element in ensuring that the requirements of section 31 are met.
27. In relation to the different terms used in reference to WNR's confidentiality agreement, the Authority considers that in order to ensure consistency and avoid uncertainty, the term 'Confidentiality and Compliance Agreement' should be used throughout when referring to this agreement.

Final Determination

Required Amendment 1

WNR's proposed revised Segregation Arrangements should be amended as follows:

- Insert the sentence "This information will be located in secure and lockable facilities within WestNet Rail's head office." after the first sentence under point (i) in the second part of section 4 on page 4.
- Replace the term "Compliance Statement" with the term "Confidentiality and Compliance Agreement".
- Replace the term "specific confidentiality agreement" with "Confidentiality and Compliance Agreement" in section 3.1 of Appendix A.

Matters Relating to WNR's 2008-09 Audit

Authority's Assessment

28. On 2 December 2009, the Authority issued a notice relating to WNR's 2008-09 compliance audit reports. This notice noted that these audits had identified some issues of non-compliance relating to the procedures associated with its Confidentiality and Compliance Agreement. The Authority noted in this notice that WNR had addressed the non-compliance issues to the satisfaction of the Authority.
29. In addressing the above non-compliance matters, WNR agreed to the Authority requiring amendments to be made to its proposed revised Segregation Arrangements which at that time were subject to public consultation. The amendments considered by the Authority to be appropriate to deal with the above matter are set out as Amendments 2 and 3 below.

Final Determination

Required Amendment 2

Section 2 of Appendix 1 of WNR's proposed revised Segregation Arrangements should be amended by inserting, at the end of this section, the following:

"Responsibilities

Chief Executive Officer is responsible and has the authority to ensure a compliance regime for the Segregation Arrangements is put in place in WestNet Rail.

Commercial Manager is responsible for commercial arrangements, dealings and negotiations with new and existing customers ensuring they comply with the Segregation Arrangements.

Manager Safety and Compliance is to ensure that documented processes and procedures are established and implemented to maintain compliance with segregation obligations as described in the Act.

Access Manager is to ensure that day to day access related functions including train control, customer liaison and train schedulers conform to the approved Segregation Arrangements.

Compliance Officer is responsible to ensure that new people required to sign the Confidentiality and Compliance Agreement are aware of the requirements and to ensure that the required agreements are actually signed, keep the actual signed agreements and maintain appropriate records.

Confidentiality and Compliance Agreement

A copy of the Confidentiality and Compliance Agreement is attached in Appendix 2."

- A copy of the Confidentiality and Compliance Agreement needs to be included as a new appendix (Appendix 2).

Required Amendment 3

Section 3.2 of Appendix A of WNR's proposed revised Segregation Arrangements should be amended by deleting the two dot point paragraphs following the first sentence under the heading "General Management of Confidential Information". These paragraphs should be replaced with the following:

- "All employees and contractors who are required to perform WestNet Rail Access related activities which are determined as confidential or which may be subject to the Segregation Arrangements shall complete an Access Segregation Awareness Training Session and sign a Confidentiality and Compliance Agreement, within 10 business days of commencing employment with WestNet Rail. The training session covers an overview of the Act and associated Code, Segregation obligations, Breaches to Segregation requirements and the need for signed Confidentiality and Compliance Agreements. The Safety and Compliance section shall maintain a list of all personnel who have undertaken the training session.
- Confirmation of appropriate personnel having signed a Confidentiality and Compliance Agreement shall be carried out on an annual basis and will be confirmed through the Independent External compliance audit.
- WestNet will maintain a current list of personnel positions, including consultants and contractors, required to undertake Access Segregation Awareness Training and sign a Confidentiality and Compliance Agreement. This list is set out below.
 - WestNet Rail head office staff based at Welshpool, including:-
 - Accountants and Finance related personnel
 - Commercial functions personnel
 - Infrastructure related personnel (including engineers and technicians)
 - Access related personnel including schedulers, timetabling and others liaising with above rail operations
 - Legal personnel
 - Safety and Compliance personnel
 - Human Resource personnel
 - Business and Development personnel
 - Administrative personnel

- Train Controllers
- WestNet Group staff including:
 - o CEO
 - o General Counsel
 - o Chief Information Officer
 - o IT related staff.
- WestNet Rail Directors
- WestNet Rail Regional Superintendents including:
 - o Perway (6) Signalling (3) Communications (1)
- Consultants and Contractors who have occasion to work in head office for a period of more than 4 consecutive days or are working in head office without being directly escorted or supervised.
- Exclusions - visitors under the direct supervision of a WestNet Rail employee.
- The Safety and Compliance Section will maintain a current register of completed and signed-off Confidentiality and Compliance Agreements. The Compliance Officer shall record on the Confidentiality and Compliance register the following information:
 - Name of person completing the agreement
 - Job role of the person
 - Work group of the person
 - Date training completed.
- On receiving the signed copy of the Confidentiality and Compliance Agreement the Compliance Officer, will enter the date the agreement was signed and the location of the stored document on the Confidentiality and Compliance Register.
- The training officer will be responsible for maintaining and updating the electronic on line Confidentiality and Compliance module found on the Intranet along with the automated completion recording of the names and dates of completion.
- The Compliance Officer will keep a file containing all signed Confidentiality and Compliance Agreements under lock and key.”

Compliance Monitoring

WNR's Proposal

30. In Section 8 of its proposed revised Segregation Arrangements, WNR has set out its proposal for an external audit of its Segregation Arrangements. Section 5 of Appendix 1 also contains details on this external audit.

Authority's Assessment

31. The Authority has outlined, in previous correspondence to WNR, the arrangements required for a two yearly independent audit of its Segregation Arrangements. Similar correspondence has also been sent to The Pilbara Infrastructure (TPI). The recently approved Segregation Arrangements for TPI set out these audit requirements. The Authority considers that WNR's Segregation Arrangements should be consistent with TPI's Segregation Arrangements in relation to the compliance requirements. Amendments 4 and 5 have been set out below to achieve this consistency.
32. The Authority also notes that TPI's approved Segregation Arrangements, contain a clause providing for the Authority to carry out a review of these arrangements after a set period of time. The Authority similarly considers that WNR's Segregation Arrangements should include a provision for the Authority to review these arrangements. In the case of WNR, a five year review period is considered to be appropriate. Amendment 4 incorporates required revisions dealing with the review issue.

Final Determination

Required Amendment 4

Section 8 of WNR's proposed revised Segregation Arrangements should be amended as follows:

- Delete the words "WITH THESE ARRANGEMENTS" in the title and replace with "AND REVIEW".
- Delete the text in point (i) and insert the following text in its place: "WNR agrees to the ERA reviewing its Segregation Arrangements in 2015 through a public consultation process. This review will commence on 1 October 2015 and WNR will provide the ERA with its proposed revision of its Segregation Arrangements on this date."
- Renumber point (ii) as point (v). Insert a new point (ii) with the following text: "WNR agrees to the ERA monitoring WNR's compliance with its Segregation Arrangements through an audit of WNR's compliance with its Segregation Arrangements conducted every two years. This audit will be carried out by an independent auditor approved by the ERA, with WNR managing and funding the audit. The scope of the audit will be determined by the ERA. It is expected that the next audit will commence at the end of the

2011-12 financial year.”

- Insert a new point (iii) with the following text: “The final audit report will be provided to the ERA. The ERA will publish this report on its website (excluding confidential information).”
- Insert a new point (iv) with the following text: “WNR acknowledges that the ERA can also commission special audits at any time on any Segregation Arrangements issue where additional assurance is required.”

Required Amendment 5

Section 5 of Appendix A of WNR’s proposed revised Segregation Arrangements should be amended by deleting the entire text in this section and replacing with the following text: “WestNet will undertake an independent external audit of its obligations under its Segregation Arrangements every two years as set out under Section 8.”

Terms and Definitions

Authority’s Assessment

33. WNR has used a number of terms in its proposed revised Segregation Arrangements, including under its definitions in section 9, which are not consistent with the terms used in the Code.
34. The Authority has set out in Amendment 6 below, the requirement for certain terms in WNR’s proposed revised Segregation Arrangements to be amended to be consistent with the Code.

Final Determination

Required Amendment 6

WNR’s Segregation Arrangements should be amended as follows:

- Section 1 (Point (iii)) - replace the words “persons seeking access or to other rail operators” with “persons seeking access, proponents or operators”.

- Section 4 (Point (i)) – replace the words “an access seeker who is seeking access” with “persons seeking access and proponents”.
- Section 6 – amend this section as follows:
 - Replace “access seekers and train operators” with “persons seeking access, proponents and operators” in the first paragraph.
 - Replace “Access seekers” with “Persons seeking access and proponents” in points (i) and (ii) of the third paragraph.
 - Replace “access seekers” with “persons seeking access and proponents” in the fifth paragraph.
 - Replace “access seeker” with “person seeking access” in the sixth paragraph.
- Section 9 – amend this section as follows:
 - Replace the definitions of “Access Agreement” and “Regulator” with the Code definition for the corresponding terms.
 - Replace the term “train operator” with “operator” in points (ii) and (iii) of the definition for “Master Train Control Diagrams”.
 - Include the Code definitions for the following terms: Access, Operator, Proponent, Rail operations, Railway infrastructure and Railway owner.
 - Include definitions, as set out in WNR’s TPP or TMG, for the following terms: Emergency, Instructions, Network, Scheduled train paths, Train control, Train control centre, Train controller and Train path.
- Appendix A (section 3.4) – amend this section as follows:
 - Replace the words “access seeker(s)” with “person(s) seeking access and proponent(s)”.
 - Replace the word “train operator” with “operator” in the first paragraph.
 - Delete the words “an associate operator or” in the second paragraph.
- Appendix 1 (sections 4.3 and 4.4) – replace the term an “access seeker” with “a person seeking access or proponent”.

Minor/Formatting Matters

Authority's Assessment

35. The Authority has identified a number of minor amendments, mostly relating to the formatting, in relation to WNR's proposed revised Segregation Arrangements. The required changes are set out under Amendment 7 below.

Final Determination

Required Amendment 7

WNR's proposed revised Segregation Arrangements should be amended as follows:

- Table and List of Contents:
 - Delete from the title the word "General".
 - Delete from the List of Contents the words "10. Appendix A – Management and Compliance Processes (See separate document)." Replace these words with "Appendix A – Management and Compliance Processes".
- Section 3:
 - Replace "will be" with "is" in the third paragraph.
 - Replace "Appendix A will include" with "Appendix A includes:" in the fifth paragraph.
 - Delete the last sentence which states "Appendix A will be approved by the Regulator and changes to Appendix A will also have to be approved by the Regulator."
- Section 4:
 - Insert the word "Segregation" before the word "Arrangements" in the second paragraph.
 - Delete the word "area" in the second sentence under point (i) of the third paragraph.
 - Insert the words "this office" after the word "and" but before the word "will" in the second sentence under point (i) of the third paragraph.
 - Delete the words "within an entity" and "of that entity" in the fifth sentence in point (ii) of the third paragraph.
- Appendix A (title, cover page and table of contents):
 - Delete the section number "10" and include Appendix A simply

as an appendix titled “Appendix A – Management and Compliance Processes”.

- Delete “(See separate document).” on page 9.
 - Delete the cover page for Appendix A (immediately after page 9), including the words “Appendix A (to the Segregation Arrangements), WestNet Rail, Segregation Arrangements, Management and Compliance Processes”.
 - Delete the table of contents for Appendix A and relocate the items therein to the table of contents for WNR’s proposed revised Segregation Arrangements (before page 1).
 - Renumber pages in Appendix A to be consecutive to the page numbers in the main text of WNR’s proposed revised Segregation Arrangements.
- Appendix A (section 1):
 - Delete the words “document” and “Determination first issued on the 6th June 2002 by the Independent Rail Access Regulator under Section 28 of the Act and any subsequent revisions.” in the first paragraph.
 - Replace the word “document” with “Appendix” in the second paragraph.
 - Replace the words “This document (Appendix A),” with “Appendix A” in the first sentence in the third paragraph.
 - Replace the words “It is the document that” with “Appendix A” in the second sentence in the third paragraph.
 - Replace the words “This document shall be” with “Appendix A is” in the fourth paragraph.
 - Delete the fifth paragraph “WestNet Rail Pty Ltd, the Owner as defined in the Railway (Access) Act 1998, provides and controls access for all Operators to the WestNet Rail routes as defined in Schedule 1 of the Railways (Access) Code 2000, in accordance with contractual obligations and the Rail Access Act 1998.”
 - Delete the sixth paragraph “(WestNet Rail shall be referred to in this document as WestNet).”
 - Appendix A (section 4.1):
 - Delete the words “development of appropriate KPIs;” on page 7.